

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DANIEL KLEEBERG, LISA STEIN,
and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER; ALEXBAY, LLC f/k/a
LESTER EBER, LLC;
CANANDAIGUA NATIONAL
CORPORATION d/b/a
CANANDAIGUA NATIONAL BANK
& TRUST; ESTATE OF ELLIOTT W.
GUMAER, JR.; EBER BROS. & CO.,
INC.; EBER BROS. WINE AND
LIQUOR CORPORATION; EBER
BROS. WINE & LIQUOR METRO,
INC.; EBER-CONNECTICUT, LLC;
and WENDY EBER,

Defendants.

Civil Action No. 16-CV-9517(LAK)

**DECLARATION OF BRIAN C. BROOK IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL THE EBER DEFENDANTS TO
PROVIDE DISCOVERY IMPROPERLY WITHHELD ON PRIVILEGE
GROUND**

1. I, Brian C. Brook, am an attorney licensed to practice law in the State of New York and in this Court, among other jurisdictions, am a partner in the law firm of Clinton Brook & Peed, and have been counsel of record for the Plaintiffs in the above-captioned case since its initial filing in December 2016.

2. I submit this declaration and the exhibits attached hereto in support of Plaintiff's Motion to Compel the Eber Defendants to Provide Discovery Improperly Withheld on Privilege Grounds.

3. Attached as Exhibit A is a true and correct copy of an Agreement reflecting transactions between Eber Metro and Poleridge Bowman.

4. Attached as Exhibit B is a true and correct copy of Lester Eber's June 24, 2015 Affidavit.

5. Attached as Exhibit C is a true and correct copy of Lester Eber's December 8, 2011 Affidavit.

6. Attached as Exhibit D is a true and correct copy of EBWLC's February 28, 2012 Unanimous Written Consent of the Board of Directors accepting and approving of Lester Eber's resignation.

7. Attached as Exhibit E is a true and correct copy of a report of the Connecticut Department of State filings by Alexbay, LLC.

8. Attached as Exhibit F is a true and correct copy of the March 13, 2012 Board Minutes for EBWLC and Eber Metro.

9. Attached as Exhibit G is a true and correct copy of the February 21, 2012 Summons for *Alexbay, LLC vs. Eber Bros. Wine & Liquor Corp., et al.*, Index No. 2012-1919.

10. Attached as Exhibit H is a true and correct copy of the June 9, 2012, Unanimous Written Consent of the Board of Directors approving of the already-completed transfer of Eber Metro shares to Alexbay.

11. Attached as Exhibit I is a true and correct copy of the May 31, 2012 email correspondence between Wendy Eber and Elliot Gumaer, Jr.

12. Attached as Exhibit J is a true and correct copy of an email from Elliot Gumaer, Jr. to Wendy and Lester Eber dated October 2, 2012.

13. Attached as Exhibit K is a true and correct copy of an email from Elliot Gumaer, Jr. to Wendy and Lester Eber dated October 29, 2013.

14. Attached as Exhibit L is a document prepared by me, combining the Eber Defendants' four current privilege logs into a single file, and annotating it with the types of challenges that Plaintiffs are asserting based on the information currently available.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: July 29, 2018

/s Brian C. Brook
Brian C. Brook